

In The Senate of the United States

Sitting as a Court of Impeachment

In re:)
Impeachment of G. Thomas Porteous, Jr.,)
United States District Judge for the)
Eastern District of Louisiana)

THE HOUSE OF REPRESENTATIVES' OPPOSITION TO JUDGE G. THOMAS PORTEOUS, JR.'S MOTION TO EXCLUDE PRIOR TESTIMONY AND LIMIT THE PRESENTATION OF TESTIMONIAL EVIDENCE TO LIVE WITNESSES

The House of Representatives (the "House"), through its Managers and counsel, respectfully opposes Judge G. Thomas Porteous, Jr.'s Motion to Exclude Prior Testimony and Limit the Presentation of Testimonial Evidence to Live Witnesses (the "Motion to Exclude Prior Testimony"). On July 21, 2010, the House filed a Motion to Admit Transcripts and Records from Prior Judicial and Congressional Proceedings (the "Motion to Admit"), which argues many of the points that the House would otherwise raise in opposition to the instant Motion to Exclude Prior Testimony. In an effort to avoid duplication of argument, the House therefore incorporates by reference its Motion to Admit as part of its Opposition to this Motion. In further support of its Opposition, the House respectfully submits:

OVERVIEW

Judge Porteous contends that any and all prior sworn testimony of witnesses – no matter the context in which the testimony was given and regardless of whether that testimony was subject to cross examination – should be excluded as evidence at trial before the Senate. His arguments turn nearly entirely on contentions surrounding his opportunity to cross-examine the various witnesses in the proceedings.

ARGUMENT

The House submits that the testimony which the House seeks to admit was subject to cross examination. Moreover, the Senate's need for access to all of the relevant facts should be the dominant consideration. To the extent that any Senator has concern about the reliability of such evidence, each Senator is capable of evaluating the weight to be assigned to the testimony.

The House seeks to admit the complete record evidence of the Fifth Circuit proceedings. This was a proceeding where Judge Porteous represented himself after having parted ways with two prior counsel. Judge Porteous cross-examined witnesses, presented his defense, consented to the admission of evidence, including Grand Jury Testimony of certain individuals, and introduced evidence on his own behalf. There is no valid reason to exclude the sworn testimony developed in those proceedings.

The same is also true of the proceedings in the House. The testimony was given under oath, Judge Porteous's counsel was afforded the opportunity to cross examine the witnesses and he availed himself of the opportunity. When additional time was requested by counsel, it was granted without any qualification.

The House submits that the approach taken in the Claiborne and Walter Nixon impeachments should serve as a model for the current proceedings. In connection with those Impeachments, the complete records of the prior proceedings were made part of the Impeachment records. These included, in Nixon, the records of the House proceedings.

It is important to recall that these are published records, which Senators should have available for their consideration. The proper weight to be afforded to the evidence is well within the province of the Senators. A Senate fully apprised of the relevant facts in making its ultimate judgment should be the paramount consideration.

WHEREFORE, for all of the foregoing reasons, as well as the reasons incorporated by reference from the House Motion to Admit Prior Records, the Motion to Exclude Prior Testimony filed by Judge Porteous should be denied.


Respectfully submitted,

THE UNITED STATES HOUSE OF REPRESENTATIVES


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By


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